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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,950	02/03/2004	Scott Jacobs	130135	3768
7590 Law Offices of John S. Munday PO BOX 423 Isanti, MN 55040			EXAMINER CHAN, SING P	
			ART UNIT 1791	PAPER NUMBER
			MAIL DATE 04/21/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/771,950

**Applicant(s)**

JACOBS ET AL.

**Examiner**

SING P. CHAN

**Art Unit**

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11 and 13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 11 and 13 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 3/5/08  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Claim Interpretation**

1. The claims are in the format of means plus function, which invoked the 35 U.S.C. 112 Sixth paragraph. Therefore, the claims will be interpreted as means plus function and all equivalents will read on the claims.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 11 and 13 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for supply means, container means, bleach spray means and plastic sheet means, does not reasonably provide enablement for packaging means. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The claims are interpreted under 35 U.S.C. 112, sixth paragraph, which required the specification to support or disclose the means for performing the function of the recited means. However, the examiner did not find any recitation in the specification for devices or apparatus or means for performing the packaging of the article.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 11 and 13, as interpreted under 35 U.S.C. 112 Sixth paragraph, the claims are in the format of means plus function, which required the specification to recite various means or a means for performing the stated functions. However, the examiner cannot find any recitation in the specification for packaging means for packaging the individual strips. Therefore, these features are not supported by the specification.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd (GB 2,287,481) in view of Sagel et al (U.S. 6,136,297) and Curtis et al (U.S. 6,270,890).

Lloyd discloses an apparatus for applying wax to a woven cloth. The apparatus includes supply roll (2) for supplying a woven cloth web (3), the web is delivered to a wax bath (10) around rollers (11) within the bath (10) (Page 6, lines 5-7 and Page 6, line 21-27), a plastics web (17) is supplied from a supply roll (18) to adhere to the wax

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saturated web (3) (Page 7, lines 1-4), cooling rollers (20, 21, 22) are provided to cool the web (3) (Page 7, line 5-15), and a cutting station (88) cut the web into sheets of a pre-desired length and discharged by conveyor to a packing station for packaging (Page 9, lines 25-33). Lloyd is silent as to the apparatus includes a bleach spray means for applying a bleaching solution to the wax and applying the plastic web to the wax with the solution coating. However, providing a bleaching solution to a dental material by spraying or using a sprayer is well known and conventional as shown for example by Curtis et al. Curtis et al discloses a method of forming a dental floss. The method includes applying medicaments such as antibacterial agent, coagulants, calcium ions, blood factors, flourides, antibiotics, anti-inflammatory, anticalculus agent, desensitizing agents, and peroxides, which is a form of bleaching agent (Col 3, lines 5-23) by spraying (Col 2, lines 64-66) onto the wax coating floss (Col 3, lines 57-58).

Furthermore, Curtis et al discloses the flavorent or medicaments can be applied to the still molten wax coating (Col 3, lines 2-3), and Sagel et al discloses using a strip of material such as polymers, natural and synthetic woven materials, non-woven material, foil, paper, rubber in forming an oral care delivery system (Col 4, lines 33-35) and also provide a release liner covering the oral care substance (14) (Col 4, lines 15-19).

Therefore, one of ordinary skill in the art reading Lloyd, Sagel et al, and Curtis et al would appreciate if the woven cloth material is to be used to applying medicaments in a dental area, it would be logical to provide a sprayer to applying the medicaments such as peroxides to the wax coated web and prior to applying the plastic film of Lloyd, which are bleaching compounds to protect the surface from contamination.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to logically provide a sprayer for applying medicaments to a wax coated material as disclosed by Sagel et al and Curtis et al in the apparatus of Lloyd to provide simple means to apply medicament to dental area or teeth.

***Response to Arguments***

8. Applicant's arguments filed March 5, 2008 have been fully considered but they are not persuasive.
9. In response to applicant's argument of the amendment rendered the rejection under 35 USC 112 moot, the examiner disagrees, since claim 11 currently recites packaging means.
10. In response to applicant's argument that Lloyd is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Lloyd is reasonably pertinent to the particular problem with which the applicant was concerned, which is providing an apparatus for coating a cloth web (3) with wax and optionally applying a plastic web or film to the wax coated cloth web (3). Furthermore, the claims are directed to an apparatus and the recitation of an "apparatus for making a teeth treatment device" in the preamble is intended use (See MPEP 2111.02 [R-3] section II) and the apparatus of Lloyd is capable of being used for making the teeth treatment device. Therefore, the instant claims do not structurally distinguish over Lloyd

and is in the field of applicant's endeavor of applying a wax to a cloth and covering with a plastic film.

11. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, the rejections also include Sagel et al, which applicant did not provide any comment.

12. In response to applicant's argument of Lloyd fail teach a bleach spray means and the necessity of having a means for applying a plastic film, the examiner agrees, but Lloyd does recite the application of the plastic web or film is optional and therefore does suggest a plastic web or film is applied if desired and the teaching of a bleach spray means is provided by Curtis and the examiner relied on Sagel et al to provide the teaching of providing a release liner on the coating of the teeth treatment coating, which includes bleaching compounds. The combination of Lloyd, Curtis, and Sagel et al discloses the instant invention.

13. In response to applicant's argument of the combination of Lloyd and Curtis teaches away from their claimed apparatus, the examiner disagrees, since the examiner relied on Curtis to provide the teaching of using a spray means to apply a bleaching compound to a wax coated material such as floss and Sagel et al teaches applying the oral treatment to the strip of material, which includes woven and non-woven material

and applying a release liner to the coating. Therefore, the combination of Lloyd, Sagel et al, and Curtis teach the instant invention.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SING P. CHAN whose telephone number is (571)272-1225. The examiner can normally be reached on Monday-Thursday 7:30AM-11:00AM and 12:00PM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip C. Tucker can be reached on 571-272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sing P Chan/  
Acting Examiner of Art Unit 1791

/Philip C Tucker/  
Supervisory Patent Examiner, Art Unit 1791